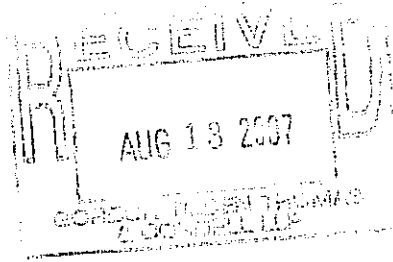


EXHIBIT D



The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DIANNE L. KELLEY and KENNETH
HANSEN,

Plaintiffs,

v.

MICROSOFT CORPORATION, a Washington
Corporation,

Defendant.

No. C07-0475 MJP

PUTATIVE CLASS ACTION

PLAINTIFFS' THIRD SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION
OF DOCUMENTS PROPOUNDED
TO DEFENDANT and
**DEFENDANT'S OBJECTIONS
AND RESPONSES THERETO**

Defendant Microsoft Corporation objects and responds to Plaintiffs' third set of interrogatories and requests for productions as follows:

I. GENERAL OBJECTIONS

1. **Limitations on Discovery.** This case is currently an individual action being prosecuted by two individuals, and the parties have agreed to bifurcate discovery in this case such that discovery related to whether a class should be certified shall occur before any discovery going to the merits of the case will commence. Thus, unless and until the case is certified as a class action (which Microsoft believes it should not be), discovery will be confined to issues relevant to class certification. Microsoft therefore objects to Plaintiffs' discovery requests to the extent they purport to seek information that is not relevant to class certification issues.

Microsoft's Responses to Third Discovery Requests
(C07-0475 MJP) — 1

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Davis Wright Tremaine LLP
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2. **Privilege.** Microsoft objects to Plaintiffs' discovery requests to the extent they seek information protected from disclosure by any privilege or other protection including, without limitation, the attorney-client privilege, a settlement privilege, the work product doctrine, or any other constitutional, statutory, common law or regulatory protection, immunity or proscription from disclosure. Where information is withheld under claim of privilege, Microsoft will so indicate on a privilege log. Microsoft does not intend the inadvertent production of any privileged or protected information to constitute a waiver of Microsoft's rights to assert any applicable privilege or protection with respect to any such information or any other matter.

3. **Obligations Beyond Civil Rules.** Microsoft objects to Plaintiffs' discovery requests to the extent they attempt to impose obligations upon Microsoft that are beyond the scope of the Federal Rules of Civil Procedure.

4. **Proportionality.** Microsoft objects to Plaintiffs' discovery requests as overbroad and unduly burdensome to the extent that they require extensive, unreasonable, expensive, and labor-intensive investigation that is out of proportion to, and cannot be justified in light of, the small size of the Plaintiffs' claims and the limited nature of class certification issues, at least unless and until the case is certified as a class action (which Microsoft believes it should not be). *See* Fed. R. Civ. P. 26(b)(1)(C).

5. **No Waiver.** By responding to Plaintiffs' particular discovery requests, Microsoft does not waive the General Objections or any specific objection to a particular request. Similarly, by stating a specific objection in response to a particular request, Microsoft does not waive the General Objections. Microsoft expressly reserves the right to challenge the competency, relevancy, materiality or admissibility of, or otherwise object to the introduction into evidence of, any information provided in response to these discovery requests.

6. **Supplementation.** Microsoft's responses to Plaintiffs' discovery requests are based upon present knowledge, information and belief following its diligent search and

1 reasonable inquiry. Discovery and investigation are ongoing. As additional information and
2 documents become available in the course of discovery or otherwise, Microsoft may deem it
3 appropriate to supplement, alter or amend these responses and objections to Plaintiffs'
4 discovery requests and reserves the right to do so. Microsoft does not thereby undertake any
5 obligation to supplement beyond that imposed by the Federal Rules of Civil Procedure.

6 **7. Confidential and Proprietary Information.** Microsoft objects to Plaintiffs'
7 discovery requests to the extent they invade any right to privacy under any applicable state or
8 federal law or constitutional provision and/or seek trade secrets, confidential, business,
9 financial, proprietary, competitive or sensitive commercial information that is entitled to
10 protection under any applicable law including, without limitation, Fed. R. Civ. P. 26. Such
11 information and documents will not be produced absent entry of an appropriate order
12 protecting the confidentiality of the information. Microsoft is prepared to discuss with
13 Plaintiffs' counsel the appropriate scope and terms of an agreed protective order.

14 **8. New Documents.** Microsoft objects to Plaintiffs' requests for production to
15 the extent that they seek to impose an obligation on Microsoft to create new documents not
16 previously in existence, through recording or other capture of audio, visual and/or other
17 digital communications solely for the purpose of discovery, where communications are not
18 otherwise recorded or captured in the ordinary course of Microsoft's business. Examples of
19 such communications include telephone conversations, instant messages, and meetings.

20 **9. Information Outside Microsoft's Possession, Custody or Control.**
21 Microsoft objects to Plaintiffs' discovery requests to the extent they seek information that is
22 not in Microsoft's possession, custody or control.

23 **10. Information Already in Plaintiffs' Possession or Otherwise Available.**
24 Microsoft objects to Plaintiffs' discovery requests to the extent they seek information already
25 within Plaintiffs' possession, publicly available or otherwise available to Plaintiffs from other
26 source(s) equally convenient, less burdensome or less expensive.

1 11. For the convenience of the parties and the Court, Microsoft's counsel has
2 electronically scanned Plaintiffs' discovery requests to create a new document that contains
3 both the original requests and Microsoft's responses and objections to each. Any deviation
4 from the original discovery requests is unintentional.

6 II. SPECIFIC OBJECTIONS AND RESPONSES

7 INTERROGATORIES

8 INTERROGATORY NO. 5: Identify by caption, date, court, arbitration organization,
9 and docket number, all consumer class actions (whether or not certified as such) that were
10 commenced against you at any time after January 1, 1993, in any court or with any arbitration
11 organization.

12 ANSWER:

13 Microsoft objects to this interrogatory under General Objections 1 [discovery limited
14 to class certification issues], 3 [exceeds scope of civil rules], 4 [proportionality], as seeking
15 information that is neither relevant nor reasonably calculated to lead to the discovery of
16 admissible evidence, and under General Objection 10 as calling for the production of
17 information that could be compiled by Plaintiffs as easily as by Defendant. Microsoft does
18 not maintain a list of all consumer class actions filed against it (whether in court or through
19 arbitration) or records from which such information could be readily compiled. Microsoft
20 further objects to Interrogatory 5 to the extent that such information is publicly available.

22 REQUESTS FOR PRODUCTION OF DOCUMENTS

23 REQUEST FOR PRODUCTION NO. 20: All orders on motions for class
24 certification entered by any court or arbitration organization in any consumer class action
25 (whether or not certified as such) that was commenced against you at any time after
26 January 1, 1993.

27 RESPONSE:

Microsoft's Responses to Third Discovery Requests
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1 Microsoft objects to this RFP under General Objections 1 [discovery limited to class
 2 certification issues], 3 [exceeds scope of civil rules], 4 [proportionality], as seeking
 3 information that is neither relevant nor reasonably calculated to lead to the discovery of
 4 admissible evidence, and under General Objection 10 as calling for the production of
 5 information that could be obtained by Plaintiffs as easily as by Defendant. Microsoft does not
 6 maintain a file of the requested orders or records from which such information could be
 7 readily compiled. Microsoft further objects to RFP 20 to the extent that such information is
 8 publicly available.

12 ANSWERS AND RESPONSES dated this 13th day of August, 2007.

13 **DAVIS WRIGHT TREMAINE LLP**

15 By 

16 Stephen M. Rummage, WSBA #11168
 17 Cassandra Kinkead, WSBA #22845
 18 Charles S. Wright, WSBA #31940

18 *Of counsel:*

19 Charles B. Casper
 20 Patrick T. Ryan
 21 Montgomery, McCracken, Walker & Rhoads, LLP 123
 22 S. Broad Street
 23 Philadelphia, PA 19109
 24 (215) 772-1500

25 Attorneys for Defendant

VERIFICATION

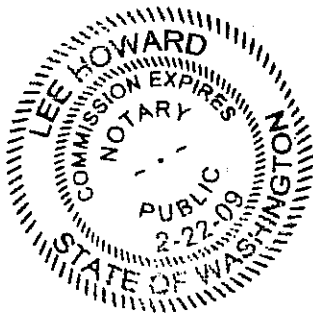
STATE OF WASHINGTON)
COUNTY OF KING) ss.

I, Thomas W. Burt, acknowledge and affirm under penalty of perjury under the laws of the State of Washington, individually and as authorized representative of Defendant MICROSOFT CORPORATION, that I have read said PLAINTIFFS' THIRD INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT and DEFENDANT'S OBJECTIONS AND RESPONSES thereto, know the contents thereof, and state the foregoing answers and responses are true and complete to the best of my knowledge and belief.

By: Thomas W Burt
Thomas W. Burt

Its: Assistant Secretary

SUBSCRIBED AND SWORN to before me this 16 day of August, 2007, by



Lee Howard
(signature)

Lee Howard
(print name)

NOTARY PUBLIC in and for the State of Washington
Residing at Seattle
My appointment expires: 02-22-09

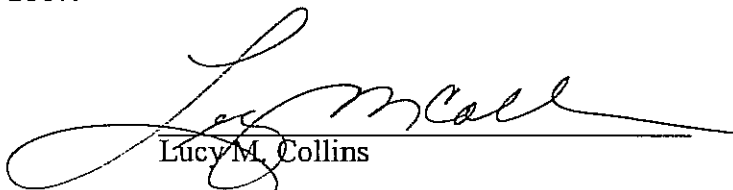
CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2007, I caused the foregoing Defendant's
Objections and Responses to Plaintiffs' Third Set of Interrogatories and Requests for
Production of Documents Propounded to Defendant to be served via hand delivery on the
following:

Jeffrey I. Tilden
Gordon Tilden Thomas & Cordell LLP
1001 Fourth Avenue, Suite 4000
Seattle, WA 98154

William C. Smart
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

DATED this 13th day of August, 2007.


Lucy M. Collins